

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

FOUR WALLS DEVELOPMENT, INC.
Respondent

Case No.: I-00-20291

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 21 Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (00-20291) served April 11, 2002, the Government charged Respondent Four Walls Development Inc. with a violation of 21 DCMR 700.3 for allegedly failing to properly store and containerize solid wastes.¹ The Notice of Infraction alleged that the violation occurred on April 9, 2002 at 4714 New Hampshire Avenue, and sought a fine of \$1,000.

On April 22, 2002, Respondent filed a timely plea of Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(2), along with a request for a reduction or suspension of any fines. Respondent explained that during the week of April 7, 2002, one of its tenants had moved, leaving various items of property which Respondent had “put out for special pickup” by a private trash hauler. Respondent stated that these items were cleared from the subject property on April

9, 2002. Respondent also stated that it had an on-going problem with illegal dumping in and around the subject property and had contacted various government agencies for assistance, largely to no avail.

By order dated May 1, 2002, I permitted the Government to respond to Respondent's plea and request. The Government opposed Respondent's request on the ground the Respondent "should be held accountable" for the violation.

II. Findings of Fact

1. By its plea of Admit with Explanation, Respondent has admitted violating 21 DCMR 700.3 on April 9, 2002 at 4714 New Hampshire Avenue, N.W.
2. On April 9, 2002, Respondent failed to properly store and containerize solid wastes at 4714 New Hampshire Avenue, N.W.
3. During the week of April 7, 2002, one of Respondent's tenants had moved out of the building, leaving various items of property which Respondent had "put out for special pickup" by a private trash hauler. These items were cleared from the subject property on April 9, 2002.
4. Respondent has contacted various government agencies about problems with illegal dumping in and around its property.
5. Respondent has accepted partial responsibility for its unlawful conduct.

¹ 21 DCMR 700.3 provides: "All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard."

6. There is no evidence in the record of a prior history of non-compliance on the part of Respondent.

III. Conclusions of Law

1. Respondent violated 21 DCMR 700.3 on April 9, 2002. A fine of \$1,000 is authorized for a first violation of this regulation.² 16 DCMR §§ 3201.1(a)(1) and 3216.1(b).
2. Respondent has requested a reduction or suspension of the authorized fine. Under the facts of this case, a reduction, although not a suspension, of the fine is appropriate. Respondent's explanation that its violation of § 700.3 occurred at least partially as a result of illegal dumping is unavailing. *Bruno v. District of Columbia Board of Appeals and Review*, 665 A.2d 202, 203 (D.C. 1995) (property owner held liable for violation of § 700.3 despite, *inter alia*, his assertion that trespassers dumped trash on his property). In light of Respondent's partial acceptance of responsibility, demonstrated efforts to comply with the requirements of § 700.3, and the lack of evidence in the record of a past history of non-compliance, I will reduce the fine to \$600. *See* D.C. Official Code §§ 2-1801.02(a)(2) and 2-1801.03(a)(6); U.S.S.G. 3E1.1; 18 U.S.C. § 3553.

² The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. *See* 47 D.C. Reg. 8962 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 700.3. 47 D.C. Reg. at 6339 (August 11, 2000).

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this ____ day of _____, 2002:

ORDERED, that Respondent shall pay a fine in the amount of **SIX HUNDRED DOLLARS (\$600)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **05/17/02**

Mark D. Poindexter
Administrative Judge